



## GUIDANCE NOTES FOR COMPLIANCE OFFICERS

BRITISH VIRGIN ISLANDS  
FINANCIAL SERVICES COMMISSION

## ESTABLISHING AN ETHOS OF COMPLIANCE

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## **1. Introduction**

1.1 The primary purpose of these Guidance Notes is as follows:

- (a) To set out the basis upon which the Financial Services Commission will act in considering whether or not to approve a person as a Compliance Officer;
- (b) To provide some guidance as to the expected roles and responsibilities of Compliance Officers; and
- (c) To facilitate the processing of application forms for the authorisation of Compliance Officers.
- (d) To assist relevant persons in duly completing the prescribed application form FSC Rp 001 for the appointment of compliance officers.

1.2 The Government and the Financial Services Commission consider that every person or entity carrying on financial services business in or from within the British Virgin Islands (BVI) has a responsibility to ensure that their business is conducted in compliance with the relevant regulatory and money laundering laws, rules and regulations.

1.3 Unfortunately, it is the experience of regulators worldwide that compliance too often takes a poor second place to the business function. As a result, regulatory breaches may be committed for no other reason than that regulations have been overlooked.

1.4 This is clearly unsatisfactory for a number of reasons. Firstly, it results in inefficient use of the regulator's limited resources. Staff time spent following up on overdue returns and other minor breaches would be better spent on more substantive regulatory matters. Secondly, it makes the regulator's job more difficult, as regulatory breaches that should be read as an early warning of underlying problems are not readily distinguishable from those caused by inefficiency.

- 1.5 Furthermore, the failure of a financial services business to ensure compliance can lead to serious consequences for the entity itself, as compliance failures may result in it unwittingly participating in, or being used by others as a vehicle for, financial crimes, including money laundering.
- 1.6 Accordingly, the BVI authorities consider the development of a “compliance culture” within the financial services industry essential to the ongoing growth of the British Virgin Islands as a sophisticated and well regulated financial services jurisdiction.
- 1.7 The BVI’s anti-money laundering and regulatory laws stipulate that every “relevant person” – that is, one carrying on a regulated financial services business, together with certain other persons participating in or connected with the financial services industry – is required to appoint or designate a fit and proper individual as its Compliance Officer. The Compliance Officer will be responsible to the Financial Services Commission for ensuring that his or her employer complies with all relevant BVI money laundering and regulatory laws, rules and regulations.
- 1.8 The Compliance Officer should be regarded as part of the senior management team. As with all senior managers, although the regulator’s role is not to run the business, the Financial Services Commission must have a direct influence over the person appointed. Hence the Financial Services Commission Act # 12 of 2001 includes specific provisions for the authorisation, discipline and withdrawal of authorisation of, inter alia, Compliance Officers. As the BVI government considered that the need to require the appointment of Compliance Officers was too urgent to wait on such legislation, provision was also inserted into the Anti-Money Laundering Code of Practice (“the Code”), which came into force on 29 December 2000.
- 1.9 Accordingly, a person may be appointed as a Compliance Officer under either the Financial Services Commission Act or the Anti-Money Laundering Code of Practice, or indeed both. Readers of these guidance notes are urged to familiarize themselves with both

paragraph 12 of the Anti-Money Laundering Code of Practice and sections 34, 35 of the Financial Services Commission Act.

## **2 Relevant Legal Provisions of the Anti-Money Laundering Code of Practice**

2.1 As indicated above, BVI legislation mandates all “relevant persons” (that is, those within and connected to financial services businesses) to appoint or designate a fit and proper Compliance Officer approved by the Commission.

2.2 In general terms, BVI legislation envisages that a Compliance Officer’s role will be the following:

- (a) To establish and maintain a manual of compliance procedures;
- (b) To ensure compliance by the relevant person with:
  - (i) the provisions of the Code and any other law relating to money laundering
  - (ii) the provisions of the Financial Services Commission Act and other relevant regulatory laws, regulations and rules;
  - (iii) the compliance manual; and
  - (iv) the internal procedures relating to the recognition and reporting of suspicious transactions which must be established under the Code;
- (c) To act as the liaison point between the Commission and the relevant person concerning compliance matters, and to respond to enquiries concerning the relevant person and the conduct of the person’s business;
- (d) To prepare and submit written compliance reports to the Commission; and
- (e) To be the focal point of contact between the Commission and the relevant person on a wide range of compliance issues, including processing fees, statutory authorisation

for authorised persons, ensuring regulatory deadlines are met, ensuring application forms are duly completed, and responding to regulatory enquiries.

- 2.3 The Code also requires every relevant person to appoint a Money Laundering Reporting Officer (“MLRO”) to receive and take appropriate action on internal suspicious transaction reports). It is recognised that in many cases the size and complexity of the business of a relevant person will not justify the appointment of different persons as MLRO and Compliance Officer, and it may be appropriate for the same person to undertake both functions.
- 2.4 It should be appreciated that, although the requirement to appoint a Compliance Officer has been introduced under the Money Laundering Code, the Officer’s responsibilities are not restricted to money laundering matters. The manual of compliance procedures required to be established and maintained by a Compliance Officer must also cover compliance with the wider regulatory obligations of the relevant person.

### **3 Factors that the Commission may Take into Account in Considering Applications for the Approval of Compliance Officers**

- 3.1 Given the importance of the compliance function, the Compliance Officer must be a senior employee of the regulated person and must have the relevant qualifications and experience to effectively discharge his or her statutory remit.
- 3.2 As indicated, the roles of MLRO and Compliance Officer may be undertaken by the same person. Furthermore, if the size and complexity of the relevant person justify it, the compliance and MLRO functions may both be undertaken by an individual who has other senior management responsibilities.
- 3.3 The Commission will not grant approval for the appointment or designation of an individual as Compliance Officer unless it is satisfied that the individual concerned is “fit and proper” to perform the compliance function. In assessing this, the Commission will take into account the following:

- (a) The individual's honesty, integrity and reputation;
- (b) Their competence and capability; and
- (c) Their financial soundness.

These are considered further below.

### **General matters**

- 3.4 Applications are to be made by the relevant person. As with all applications for regulatory approval, the onus of satisfying the Commission that an individual is fit and proper rests with the applicant.
- 3.5 It is important to appreciate that the Commission's determination is made in the light of the particular functions to be undertaken. It will thus depend on the suitability of the proposed Compliance Officer to the scope, span and scale of the relevant person's activities. That an individual has already been approved by the Commission as fit and proper to act in some other capacity (for example, as a director of the relevant person), should not be taken as an assurance that he or she will be considered fit and proper to act as Compliance Officer.
- 3.6 In considering an application for the approval of an individual as Compliance Officer, the Commission is not restricted to the matters set out in paragraph 3.3 above.

### **Honesty, integrity and reputation**

- 3.7 The matters that the Commission may take into account in determining the honesty, integrity and reputation of an individual include the following:

- (a) Any criminal convictions or any criminal charges outstanding, with particular significance attached to offences of dishonesty or relating to financial crime or committed under any financial services legislation;
- (b) Any adverse finding or settlement in civil proceedings, particularly in connection with a company or a financial services business;
- (c) Any association, past or present, with a firm, company or other person that is, or has been the subject of, a regulatory investigation or of disciplinary or enforcement proceedings;
- (d) Any disciplinary, enforcement, disqualification or similar proceedings to which the proposed Compliance Office has been, or may be, subject;
- (e) Any previous regulatory breaches committed by him or her or by a person with whom he or she is, or has been, associated and any complaints made against him.
- (f) The insolvency of any business with which he or she is or has been connected; and
- (g) Whether he or she has been candid and truthful in dealings with the Director and/or any other regulatory body.

3.8 In respect of the above, the Commission may take into account matters that have taken place within or outside the British Virgin Islands.

**Competence and capability**

3.9 The applicant must satisfy the Commission that the individual concerned has, whether through his or her experience and/or training, the competence and capability to act as Compliance Officer. This will involve the Officer having a general understanding of the

nature of the relevant person's business activities and the associated risks, as well as of the relevant BVI regulatory and anti-money laundering laws, codes and regulations.

### **Financial soundness**

3.10 The Commission may take into account any factor that suggests that the individual proposed is, may become or has been insolvent, or has or has had any unsatisfied debts.

## **4 Functions and Responsibilities of the Compliance Officer**

### **General**

4.1 The Compliance Officer of a British Virgin Islands licensee will be expected to be based in the British Virgin Islands.

4.2 As stated above, the Officer must also be a key member of the staff of the relevant person. He or she must be sufficiently independent to perform his role objectively. The Officer must have sufficient resources, including time and –, if the scale and complexity of the relevant persons justify it –, support staff to perform his or her functions and must have unrestricted access to all books and records of the relevant person and personnel, including executive and non-executive directors, senior management and auditors. The issues of independence and resources are particularly important if the Compliance Officer fulfils other functions.

4.3 The authority of the Compliance Officer must extend to liaising directly with the Commission and to providing information concerning regulatory matters.

4.4 Every relevant person must ensure that arrangements are made for some other person to undertake the compliance functions during any temporary absence of the Compliance Officer.

4.5 The organisation of the compliance function and the responsibilities of the Compliance Officer must be fully documented.

#### **Principal functions of Compliance Officer**

4.6 The principal functions of the Compliance Officer are:

- (a) To ensure that the relevant person concerned carries on business in compliance with regulatory obligations, including those relating to money laundering;
- (b) To liaise with the Commission concerning regulatory matters as they apply to the relevant person concerned;
- (c) To establish and maintain a compliance training programme: this should cover client acceptance procedures, know your customer (KYC) procedures, and suspicious activity reports relevant to the organisation's activities; and
- (d) To test periodically the relevant person's internal control mechanisms and ensure they comply with relevant BVI laws, code etc and to bench such controls against best conduct of business practices.

#### **Fulfilling the compliance function**

4.7 The manner in which the compliance function is achieved will depend upon, and must be appropriate to, the nature, scale and complexity of the financial services business in question. It is not possible for these Guidance Notes to prescribe this in detail and the Notes should thus not be regarded as exhaustive. Each Compliance Officer will have to determine the necessary processes and procedures to fulfil his or her compliance functions.

4.8 Some general guidance is, however, set out below.

- (a) The Anti-Money Laundering Code requires every Compliance Officer to establish and maintain a compliance manual. The procedures set out in this should be certain and robust. The manual should include the following (see Appendix A for further guidance) :
- (i) An organigram which, together with job descriptions, sets out clearly the individual responsibilities of all senior managers;
  - (ii) Procedures for identification, record keeping and suspicious transaction reporting;
  - (iii) The specific regulatory obligations of the relevant person, specifying (together with the organigram and job descriptions) who has responsibility for each obligation.
- (b) The Compliance Officer is responsible for ensuring that all staff are aware of the need for compliance and that they understand the compliance procedures in force. This will require the Officer to give or organise regular training sessions , which must include training in money laundering procedures, as required by the Code.
- (c) The Compliance Officer must be satisfied that adequate records are kept of the relevant person's business and that identification records are also kept, as required by the Code.
- (d) The Compliance Officer is responsible for ensuring that all returns required to be made to the Financial Services Commission are complete and filed within the relevant time period.
- (e) The Compliance Officer should undertake regular structured reviews of compliance and make regular assessment reports to senior management, identifying any

deficiencies. The Officer must be satisfied that his or her reports are properly considered by management and that necessary action is taken.

- (f) The Compliance Officer's role should will usually be expected to extend to establishing and monitoring a complaints procedure for handling complaints made to the relevant person in respect of the business.
- (g) The Compliance Officer should, in particular, be satisfied that the MLRO is complying with his or her obligations under the Code, in receiving and properly considering suspicious transaction reports and, where appropriate, making reports to the Financial Intelligence Unit (FIU).
- (h) The Compliance Officer is also responsible for monitoring developments and changes in regulatory legislation, regulations and guidance issued by the Financial Services Commission, and in international standards, and for keeping his employer up to date with regulatory developments and changes.

## **5 Enforcement**

- 5.1 is extremely important for all concerned to appreciate that a Compliance Officer has regulatory responsibilities over and above those of his employer. If these responsibilities are breached, the regulator will be able, to take specific enforcement action against a Compliance Officer.
- 5.2 However, the primary responsibility for compliance remains with the relevant person concerned and their failure to comply will not necessarily lead to enforcement action against the Compliance Officer. The Officer will only be liable to enforcement action where there is personal culpability.

5.3 The Commission will withdraw approval in respect of any Compliance Officer who is shown to be personally culpable for the failure of a relevant person to comply with regulatory or money laundering responsibilities.

## **6. Exemptions**

6.1 It is recognised that in the case of some relevant persons, notably mutual funds and captive insurance companies who do not employ staff in the traditional sense, full compliance with the Code is not necessarily appropriate. The Code therefore permits the Director to issue a notice exempting “qualifying relevant persons” from certain provisions of the Code or modifying the application of the Code to them.

6.2 It should be stressed that the purpose of any exemption granted is not to permit the qualifying relevant person concerned to conduct its business to a lower regulatory standard or contrary to the main provisions of the Code. The purpose of an exemption is to recognise that, by virtue of the way in which the business of certain relevant qualifying persons is structured, it is more appropriate for them to achieve compliance with the Code in a manner not provided for by the Code.

6.3 In respect of compliance, for example, it is recognised that by their nature mutual funds and captive insurers often have no staff but are normally managed by other relevant persons. It would clearly not be appropriate, therefore, to require a captive insurer to employ a member of staff as its Compliance Officer, provided that the compliance function can be adequately undertaken by the insurance manager.

## APPENDIX A

### **Guidance on Matters to be Covered in Compliance Manual**

Each relevant person is responsible for the preparation of its own compliance manual. The contents of the manual will depend upon a number of matters including the nature and extent of the business undertaken by the relevant person concerned. It follows that it is neither possible nor appropriate for the Department of Financial Services to prescribe what should be included in a compliance manual.

Nevertheless, there are common themes and, in an attempt to assist the financial services industry in the BVI, the Department has drawn up the following guidance. This guidance should not be considered definitive or exhaustive.

#### **General**

1. A compliance manual:
  - (a) should be written clearly, avoiding jargon and legal terms wherever possible; and
  - (b) should specify who is responsible for each task, how often the task must be carried out and should specify as precisely as possible, what the person concerned must do to meet his obligations as set out in the manual (generalisations such as “take appropriate steps” should be avoided); and
  - (c) should clearly reference any other procedural manuals or written instructions where necessary.
2. Although the manual will cover specific tasks in detail, it should not be considered as simply a “tick box” checklist of procedures. Its purpose should also be to enable staff to understand what they should be doing and why. It is important, therefore, that the manual

provides sufficient information concerning the legal and practical framework to enable staff to apply general principles to specific situations that may be outside the precise scope of the manual. The manual should address the following general areas:

- (a) the purpose of the manual;
  - (b) a general description of the relevant law (including regulations) and any guidance issued by the Financial Services Department;
  - (c) a general description of the business undertaken by the relevant person, including comment on the approach it takes to the business, the risks associated with the business and the risk management systems in place;
  - (d) the regulatory and money laundering obligations of the relevant person concerned (arising out of paragraphs b and c);
  - (e) relevant international standards;
  - (f) the possible consequences of failure to comply with the manual (for the employee concerned, the relevant person and the financial services industry in BVI) and the importance of developing a compliance culture within the relevant person; and
  - (g) the role of the compliance officer and of any compliance committee that may be established (see further paragraph 7 below).
3. The compliance manual should set out who is responsible for monitoring compliance (ultimately the Compliance Officer) and how compliance is to be monitored and reviewed. The manual should explain the compliance roles of the auditors and of the internal audit function, where appropriate.

4. A well drafted manual should provide the Compliance Officer with measurable standards against which to test compliance.
5. It may be helpful to deal with compliance issues by breaking the business of the relevant person into discrete functions and, in respect of each function, to set out the risks, the procedures to be applied (the tasks), who is responsible for the procedures or tasks and the procedures for the monitoring of compliance.

### **Specific areas**

6. A compliance manual should include an organigram together with job descriptions which sets out the individual responsibilities of all senior managers. The manual should set out the compliance reporting structure.
7. As indicated, the role of the compliance officer should be clearly set out in the manual. It is suggested that the manual should provide guidance as to when staff members should bring matters to the attention of the Compliance Officer, perhaps providing standard reporting forms. The Department considers that a key role of the Compliance Officer should be to review the compliance manual itself. To this end, the manual could usefully provide a mechanism for regular review and updating.
8. The mechanism for reporting of breaches in compliance, whether rectified or not, should be specified.
9. Obviously the functions listed in the manual will depend upon the business of the relevant person concerned. For example, a trust company will have specific trust and company management functions and a fund manager, bank and insurance company will all have their own specific functions. It is not the intention of these guidelines to cover these specific functions. Indeed, the exercise of analysing the business functions, the risks, the procedures or tasks and the monitoring of compliance can only be undertaken by the

relevant person concerned. Nevertheless, there are procedures that are common to all businesses. These include:

(a) **Record keeping and disclosure**

It may be appropriate to cover a number of issues under this head, such as:

- (i) what records should be kept (eg identification, transaction and accounting records);
- (ii) how those records should be kept and whether it would be useful to provide pro forma records;
- (iii) how long those records should be kept (some must be kept for a minimum period of time);
- (iv) what risks are associated with the keeping of incorrect or insufficient records;
- (v) how records are to be stored (eg whether paper copies of electronic records should be kept; and
- (vi) how and when compliance is checked (eg by compliance officer, external audit etc).

(b) **Know your customer, client acceptance and due diligence procedures**

Note that this function covers not just customers and potential customers but also any intermediaries and external service providers relied upon. The manual should cover at least the following:

- (i) the KYC, client acceptance and due diligence procedures, if not detailed in writing elsewhere (significant guidance is provided in the Guidance Notes issued under the Code);
- (ii) the risks associated with a failure to apply KYC, client acceptance and due diligence procedures (in respect of customers, intermediaries and external service providers);
- (iii) the procedures for the ongoing monitoring of clients and service providers (eg what matters should trigger concern);
- (iv) how and when compliance is checked.

(c) **Training and recruitment**

Training programmes should include money laundering, regulation and compliance. The following matters should be included in the manual:

- (i) a staff training plan covering type and frequency of training and a succession plan (in respect of key personnel);
- (ii) the training of new staff;
- (iii) who is to provide staff training;
- (iv) staff training records;
- (v) the risks of inadequate staff training;

(vi) how the effectiveness of staff training is to be assessed (eg when should there be staff appraisal?);

(d) **Compliance with statutory filing, reporting and other regulatory obligations**

This should cover all statutory and regulatory obligations including the persons responsible for compliance in respect of each obligation and the procedures for recording and monitoring compliance.

(e) **Complaints**

Matters covered could include:

- (i) the person responsible for handling complaints at first instance;
- (ii) guidelines for dealing with complaints at first instance (eg time period for initial decision on complaints and which complaints should be referred to the compliance officer or other senior management),
- (iii) the proper investigation of complaints;
- (iv) what action should be taken where complaints are found to be justified;
- (v) records to be kept of complaints;
- (vi) communication with complainor;
- (vii) monitoring of complaints handling.

(f) **Reporting breaches of compliance**

The manual should include detailed procedures for the reporting of breaches of compliance.

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